

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

ALABAMA AIRCRAFT INDUSTRIES,
INC., *et al.*,

Debtors.

Chapter 11

Case No. 11-10452 (PJW)

Jointly Administered

STATEMENT OF ISSUES TO BE PRESENTED
AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, the Boeing Company files its statement of issues to be presented and designation of items to be included in the record on appeal.

Statement of Issues to be Presented

- I. Assuming that Official Committee of Unsecured Creditors of Cybergenics Corporation v. Chinery, 330 F.3d 548 (3d Cir. 2003) (“Cybergenics”) was correctly decided, whether Cybergenics and the applicable provisions of title 11 of the United States Code (the “Bankruptcy Code”) authorized the bankruptcy court to grant the novel and unprecedented relief in the order (D.I. 486) (the “Order”) with respect to the litigation trust and the trust causes of action, including the establishment of a litigation trust outside of a chapter 11 plan?
- II. Assuming that Cybergenics authorized the bankruptcy court to grant the novel and unprecedented relief in the Order with respect to the litigation trust and the trust causes of action, whether the bankruptcy court correctly applied Cybergenics given the record and evidence before it?
- III. Assuming that Cybergenics authorized the bankruptcy court to grant the novel and unprecedented relief in the Order with respect to the litigation trust and the trust causes of action,

whether (a) the bankruptcy court erred when it made a declaratory judgment that the trust causes of action vest in the litigation trust without regard to, or consideration of, restrictions under applicable law regarding the assignability or transferability of the trust causes of action and (b) such vesting violated applicable non-bankruptcy law, the applicable provisions of the Bankruptcy Code and controlling precedent in this jurisdiction?

IV. Whether the bankruptcy court erred in ruling that 11 U.S.C. § 363(m) applies to the establishment of the litigation trust and the purported vesting of the trust causes of action in the litigation trust potentially limiting appellate review by an Article III court?

V. Whether the bankruptcy court erred by granting the relief with respect to the litigation trust and the trust causes of action, including the establishment of a litigation trust outside of a chapter 11 plan, when the sale motion (D.I. 456) did not state the grounds for the actual relief requested in violation of, among other things, Rule 9013 of the Federal Rules of Bankruptcy Procedure?

Upon information and belief, this is the first time a bankruptcy court has ever (a) authorized the formation of a litigation trust outside of a plan pursuant to 11 U.S.C. § 1123(b)(3)(B) and (b) authorized the transfer or assignment of causes of action to a third party in the context of a sale without regards to, or consideration of, restrictions under applicable law regarding the assignability or transferability of the trust causes of action. Therefore, we believe that all of the issues presented are matters of first impression.

Designation of Items to be Included in the Record on Appeal

<u>Description of Item</u> ¹	<u>D.I. No.</u>
1. Order to Retain Ordinary Course Professionals	93
2. Transcript regarding Hearing Held 3/24/2011 RE: Omnibus Hearing	144
3. Reply to the Objections Filed by the Debtors, Special Value Bond Fund LLC, and Pension Benefit Guarantee Corporation to The Boeing Company's Motion for Adequate Protection Filed by The Boeing Company	159
4. Schedules/Statements filed: Sch A, Sch B, Sch D, Sch E, Sch F, Sch G, Sch H, Sum of Schs, Decl Concerning Debtors Schs,. Alabama Aircraft Industries, Inc. - Birmingham Filed by Alabama Aircraft Industries, Inc.	169
5. Sur-Reply of the Debtors in Further Support of Their Objection to the Boeing Company's Motion for Adequate Protection Filed by Alabama Aircraft Industries, Inc.	184
6. Debtors' Motion Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of the Sale Order (i) Approving the Sale of Assets, Including the Assumption and Assignment of Contracts, Free and Clear of All Liens, Claims, and Interests and (ii) Approving the Form and Manner of Notice of Assumption and Assignment of Contracts Filed by Alabama Aircraft Industries, Inc.	279
7. Debtors' First Quarterly Operating Report for Ordinary Course Professionals Filed by Alabama Aircraft Industries, Inc.	295
8. Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein Filed by Alabama Aircraft Industries, Inc.	450

¹ Every item includes all applicable exhibits and other filings with respect to such D.I.

9. Debtors Motion for an Order Shortening the Time for Notice of the Hearing to Consider Debtors Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein	451
10. Order Shortening the Time for Notice of the Hearing to Consider Debtors' Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors' Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Assign Certain Claims to a Litigation Trust	452
11. Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein [Corrected Version] Filed by Alabama Aircraft Industries, Inc.. Hearing scheduled for 9/1/2011 at 10:00 AM at US Bankruptcy Court, 824 Market St., 6th Fl., Courtroom #2, Wilmington, Delaware. Objections due by 8/29/2011	456
12. Response and Reservation of Rights with Respect to the Debtors Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially All of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of All Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein	460
13. Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	464
14. Certificate of Service for Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	465
15. Supplemental Certificate of Service for Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	466

<p>16. Response / Debtors' Motion for Leave to File Debtors' Response to the Objection of The Boeing Company to the Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein [Corrected Version] (related document(s) 456 , 464) Filed by Alabama Aircraft Industries, Inc.</p>	472
<p>17. Motion for Leave to File Reply Of Kaiser Aircraft Industries, Inc. To The Objection Of The Boeing Company To The Debtors Motion Pursuant To Sections 105(A), 363, And 365 Of The Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, And 9014, And Local Rules 2002-1 And 6004-1, Seeking Entry Of An Order Approving The Sale Of Substantially All Of The Debtors Operating Assets, Including The Assumption And Assignment Of Contracts And Leases, Free And Clear Of All Liens, Claims And Interests To Kaiser Aircraft Industries, Inc. And Authorizing The Debtors To Establish A Litigation Trust And Vest Certain Claims Therein</p>	473
<p>18. Objection to (1) the Debtors' Motion for Leave to File a Response to The Boeing Company's Objection to Sale Motion [Corrected Version] and (2) Kaiser Aircraft Industries, Inc.'s Motion for Leave to File a Reply to The Boeing Company's Objection to Sale Motion</p>	475
<p>19. Response Of Official Committee Of Unsecured Creditors To Debtors' Motion Seeking Entry Of An Order Approving The Sale Of Substantially All Of The Debtors' Operating Assets, Including The Assumption And Assignment Of Contracts And Leases, Free And Clear Of All Liens Claims And Interests To Kaiser Aircraft Industries, Inc. And Authorizing The Debtors To Establish A Litigation Trust And Vest Certain Claims Therein (Related Docket No. 456), Filed by Official Committee of Unsecured Creditors</p>	478

20. Order Granting Debtors' Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein (Related Doc # 456 , 485) Order Signed on 9/6/2011	486
21. Monthly Application for Compensation of Alston & Bird LLP for the period (Sixth) July 1, 2011 to July 31, 2011 Filed by Alston & Bird LLP. Objections due by 9/22/2011	487
22. Transcript and Exhibits regarding Hearing Held 9/1/2011 RE: Sale Hearing (Debtors' Exhibit 1 and Debtors' Exhibit 2 are not included. The Bankruptcy Court should have a copy. Counsel for the Boeing Company will supplement as needed.)	508
23. Notice of Filing Complaint	510
24. Notice of Appeal .(BAP-11-71). Fee Amount \$255. (related document(s) 486) Filed by The Boeing Company. Appellant Designation due by 10/3/2011	511
25. Supplemental Certificate of Service regarding Notice of Filing Complaint and Notice of Appeal	513
26. Notice of Service Notice of Transmittal of Notice of Appeal to Bankruptcy Judge Pursuant to Del. Bankr. L.R. 8001-1(b) (related document(s) 511) Filed by The Boeing Company	514
27. Monthly Application for Compensation of Young Conaway Stargatt & Taylor, LLP for the period (Seventh) August 1, 2011 to August 31, 2011 Filed by Young Conaway Stargatt & Taylor, LLP. Objections due by 10/6/2011	515

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DATED: October 3, 2011.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	CHAPTER 11
)	
ALABAMA AIRCRAFT INDUSTRIES, INC., <i>et al.</i> ¹ ,)	Case No. 11-10452 (PJW)
)	(Jointly Administered)
Debtors.)	
_____)	

CERTIFICATE OF SERVICE

I, Christopher D. Loizides, hereby certify that on October 3, 2011, I did cause to be served true and correct copies of **DESIGNATION OF ITEMS AND STATEMENT OF ISSUES** on the parties listed on the attached service list as indicated thereon.

DATED: October 3, 2011

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